

that the word "thereupon" here means "upon the publishing of the order in the *Gazette*." We are unable to accept this view. The word "thereupon" here means "on the making of the order" and "the same shall apply accordingly" means "the same shall apply according to the order made."

For these reasons the appeal must be allowed with costs here and in the court below.

Appeal allowed.

Solicitors: *Drew & Napier.*

ATTORNEY-GENERAL v. CHIN AH LOY

[C.A. (Wee Chong Jin C.J., Kulasekaram and D'Cotta JJ.)
November 24, 1978]

[Singapore — Civil Appeal No. 25 of 1978]

Landlord and Tenant — Tenancy period for a 3 year-term with option to renew for a further 3 year period — Tenancy determinable by 3 months' notice in writing — Option to renew exercised by tenant and granted by government with effect from February 1, 1975 — Government giving 3 months' notice on January 31, 1975 to terminate tenancy — Validity of notice to quit in dispute.

On October 28, 1971 the Government of Singapore invited tenders for three shops at the Singapore Airport. The respondent's tender in respect of one of the shops was accepted on January 11, 1972 by a letter from the then Director of Civil Aviation. The letter provided for a 3 year-tenancy commencing on January 1, 1972 with an option for extension of 3 years subject to the Director of Civil Aviation being satisfied with the quality of the services provided and the prices charged. The respondent accepted these terms and conditions and entered into possession. The tenancy, however, commenced on February 1, 1972. On May 3, 1972 the respondent received the tenancy agreement for execution. Clause 4(i) of the agreement provided for a term of 3 years from February 1, 1972 determinable at anytime by either party giving to the other 3 months' previous notice in writing. Subsequent correspondence ensued between the parties with the respondent expressing concern in regard to the said clause 4(i) and asked for a "secured term of 3 years". On June 27, 1972 in reply to this, the Director of Civil Aviation wrote, "...you may be reassured that if you observe carefully the rules and regulations of the Tenancy Agreement, your tenancy may be considered as secure for the period in question. The option for the extension of your tenancy as contained in my letter...dated 11.1.72 is not repeated in the Agreement as this letter may be taken as a part of your Tenancy Agreement with us."

By a letter dated October 30, 1974 the respondent indicated his wish to exercise the option to extend the tenancy for a further term of three years. On January 31, 1975 the Ag. Permanent Secretary, Ministry of Communications granted the "extension of the Tenancy Agreement with effect from February 1, 1975 on the same terms and conditions of the said Tenancy Agreement." In the same letter he gave the respondent 3 months' notice under clause 4(i) of the Tenancy Agreement to terminate the tenancy and stated that the notice would expire on April 30, 1975. As from May 1, 1975 the respondent was denied access to the shop and eventually dispossessed. He claimed damages for breach of the tenancy agreement and for wrongful dispossession. The High Court awarded him damages and the defendant in the action appealed.

Held, allowing the appeal: (1) the assurance given by the Director of Civil Aviation in the letter dated June 27, 1972 was not a term of the tenancy agreement which displaced the provisions of clause 4(i) but was a collateral warranty which was no longer binding on the government after the expiry of the initial three-year term of the tenancy;

(2) the notice to quit given on January 31, 1972 a few hours before the commencement of the extended term of the tenancy was a valid notice given in compliance with clause 4(i) of the tenancy agreement. Even if there was a new tenancy, the said notice was a valid notice.

A Cases referred to:-

- (1) *Lower v. Sorrell* [1963] 1 Q.B. 959.
- (2) *Sidebotham v. Holland* [1895] 1 Q.B. 378.

COURT OF APPEAL.

Chao Hick Tin (Deputy Senior State Counsel) for the appellant.

B *K.S. Chung* (Tommy Neo with him) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): On October 28, 1971 the Government of Singapore invited tenders for three shops at the Singapore Airport, one of which is described in the tender invitation as "Airport Shop, No. 22 — 1st Floor Arrival Hall (see Sketch B)". Paragraph 4 of the tender invitation states:—

"4. The above shops will operate for an initial period of 3 years with the option of a further extension of 3 years subject to the (Director of Civil Aviation) being satisfied with the quality of the service provided and prices charged."

D The tender of Chin Ah Loy (hereinafter referred to as "the respondent") in respect of Airport Shop No. 22, was accepted on January 11, 1972 by a letter from the then Director of Civil Aviation. In that letter it is stated:—

"3. Your tenancy will commence on the January 1, 1972 for a period of 3 years with an option for extension of 3 years subject to the (Director of Civil Aviation) being satisfied with the quality of the services provided and prices charged...."

E 6. Would you please let me have your written confirmation by the January 20, 1972 that you accept appointment as the operator and that you will operate the duty free shop for 3 years effective from February 1, 1972."

By a letter dated January 19, 1972 the respondent confirmed his acceptance of the offer according to the terms and conditions set out in the Director of Civil Aviation's letter of January 11, 1972 subject to two exceptions, one of which was that the tenancy should commence on February 18, 1972. This request was rejected and it would appear that the respondent entered into possession of the shop and that the tenancy commenced on February 1, 1972.

G On May 3, 1972 the Director of Civil Aviation wrote to the respondent forwarding the tenancy agreement for signature and return. The tenancy agreement (which was subsequently executed and dated August 2, 1972) demised the shop to the respondent "for the term of 3 years from the 1st day of February 1972 determinable as hereinafter provided". Clause 4

H of the tenancy agreement reads as follows:—

"4. Provided always and it is hereby agreed as follows:—

- (i) Notwithstanding anything herein contained either party may terminate the tenancy at any time by giving to the other three (3) months previous notice in writing."

On June 24, 1972 the respondent replied as follows:—

I "The Director of Civil Aviation,
Singapore Airport,
Singapore, 19.

Attn: Mr. Goh Hong Wan

Dear Sir,

Re: Tenancy Agreement

Reference your letter dated 3.5.1972 enclosing the tenancy agreement for signature, we have to invite your attention to the following observations:

(1) Clause 4(i) of the tenancy agreement: The effect of the clause is that we will only have a three months' tenancy agreement although on the face of it, it is stated three years. With such a clause, we will not have the confidence to lavish money in promoting this business to our mutual benefits, and beautifying our shop, the object being to turn it into an airport show piece. We have the apprehension that we will not be able to enjoy a secured term of 3 years, and that others may reap the fruit of our labour.

On this clause, we hope you would reconsider it. What we want is to have a secured term of 3 years provided we have not committed any serious breach of the tenancy agreement. If necessary, we should like to have an appointment with Mr. Ngiam Dong Dow whom the undersigned knows personally whilst he was with the Federal Chemical Industries (S) Pte. Ltd.

(2) In your letter DCA/1/72 dated 11.1.72, you have given us an option for extension of 3 years subject to certain conditions at the expiry of the present term. We do not, however, find this in the tenancy agreement. Would it be an oversight? Please advise.

We regret that we take up the above matters with you now because of the undersigned's hospitalisation for a considerable period of time.

Yours sincerely,
Chin International
Sd:
(C.L. Chin)
Managing Partner."

The Director of Civil Aviation replied to the respondent's letter of June 24 by letter dated June 27, 1972 as follows:—

"Mr. C.L. Chin
Managing Partner
Chin International
20, Hooper Road
Singapore, 9.
Dear Sir,

Re: Tenancy Agreement

Your minute of the 24th instant refers.

We regret to advise that we are unable to reconsider Clause 4(i) of the Tenancy Agreement. Please note that this Clause is a standard one applicable and inserted into all our Agreements. However, you may be re-assured that if you observe carefully the rules and regulations of the Tenancy Agreement, your tenancy may be considered as secure for the period in question.

The option for the extension of your tenancy as contained in my letter DCA/1/72 dated November 1, 1972 is not repeated in the Agreement as this letter may be taken as a part of your Tenancy Agreement with us.

We regret to hear of your hospitalisation and would advise that you sign the Agreement without any further delay. Please note that you should not stamp the Agreement as advised. After the Perm. Secretary has signed the Agreement, it will be forwarded back to you for stamping.

We hope to hear from you soonest possible.

Yours faithfully,
Sd:
(Goh Hong Wan)
Airport Manager (PL)
f. Director of Civil Aviation
Singapore."

By a letter dated October 30, 1974 to the Director of Civil Aviation the respondent wrote, *inter alia*, as follows:—

"We would now like to exercise and we do hereby exercise the option you gave to us in paragraph 3 of your letter dated January 11, 1972 and we look forward to your early confirmation of the extension of the tenancy for a further term of three years."

In reply to the respondent's letter the Acting Permanent Secretary, Ministry of Communications,

A wrote on January 31, 1975. The material provisions of this letter read as follows:—

"With reference to your letter of October 30, 1974 addressed to the Director of Civil Aviation and your exercise of the option to renew our Tenancy Agreement dated August 2, 1972, we confirm that the Government has granted you an extension of the said Tenancy Agreement with effect from February 1, 1975 on the same terms and conditions of the said Tenancy Agreement. Nevertheless we hereby give you 3 months' notice under Clause 4(i) of the said Tenancy Agreement as extended hereunder to terminate your Tenancy thereunder.

....

3. Please note that this notice expires on April 30, 1975."

As from May 1, 1975 the respondent was denied access to the demised shop and eventually dispossessed. He claimed damages for breach of the tenancy agreement and for wrongful dispossession. The High Court gave judgment for the respondent and awarded him damages in the sum of \$604,890 and costs. In his oral judgment Choor Singh J. said:—

"I find for the plaintiff. The evidence clearly shows that the Government of Singapore committed a breach of the tenancy agreement when they terminated the plaintiff's tenancy of the shop in question. I accept the plaintiff's evidence that if not for the assurance given by the Director of Civil Aviation in his letter of June 27, 1972, that so long as the plaintiff carefully observed the rules and regulations of the tenancy agreement he could consider his tenancy as secure for the period in question, he would not have entered into the said agreement. By giving this assurance the Director of Civil Aviation bound the Government of Singapore not to invoke the termination clause so long as the plaintiff carried out his obligations under the tenancy agreement. The effect of this assurance was that the Government of Singapore could invoke clause 4(i) of the agreement only when the plaintiff had committed some breach of the tenancy agreement.

The Government, having accepted the plaintiff's exercise of his option, the tenancy agreement was renewed and was in force for a further period of three years as from February 1, 1975 but on January 31, 1975 the Government purported to terminate the tenancy by invoking clause 4(i) and giving the plaintiff three months notice. The tenancy was renewed with effect from February 1, 1975 on the same terms and conditions which applied to the first term of three years. This meant that the Government could terminate the second term of three years only when they found the plaintiff had committed some breach of the tenancy agreement. On January 31, 1975 when the Government purported to terminate the second term by invoking clause 4(i), the plaintiff had not committed any breach of the tenancy agreement. In fact the second term had not yet commenced. It commenced on February 1, 1975, but the notice to terminate the second term was given on January 31, 1975. The Government had no valid grounds at all to terminate the second term and dispossess the plaintiff."

The Attorney-General as the defendant in the action now appeals. He contends that the trial judge erred in holding that the assurance given by the Director of Civil Aviation in his letter of June 27, 1972 applied to the second three-year term. The submission is that this assurance clearly relates to the initial three-year term of the tenancy created under the tenancy agreement between the parties and that this assurance does not apply to the second three-year term which commenced on February 1, 1975. We agree with this submission. In our opinion it is plain beyond doubt, from the respondent's letter of June 24, 1972, that the phrase "period in question" in the Director of Civil Aviation's letter of June 27, 1972 must be construed, and must have been understood by the parties, to mean the initial three-year term of the tenancy.

It is, also, in our opinion, plain that this assurance is not a term of the tenancy agreement which displaces the provisions of Clause 4(i) but is a collateral warranty which is no longer binding on the Government after the expiry of the initial three-year term of the tenancy. It is clear from the correspondence prior to the signing of the tenancy agreement that the appellant was seeking to have, in his own words, "a secured term of 3 years" and that he obtained from the Director of Civil Aviation a binding promise that his "tenancy may be considered as secure for the period in question" only.

The only other question to be decided in this appeal is whether or not the notice to quit contained in the Permanent Secretary's letter of January 31, 1975 was effective to terminate the tenancy on April 30, 1975. It is common ground that the tenancy under the tenancy agreement dated August 2, 1972 was for a term of three years "with an option for extension of 3 years subject to the (Director of Civil Aviation) being satisfied with the quality of the services provided and prices charged". The appellant exercised this option by his letter of October 30, 1974.

In the first place, the 1972 tenancy agreement into which must be incorporated the option clause as set out in paragraph 3 of the Director of Civil Aviation's letter of January 11, 1972 is a clear agreement for the initial three-year term of the tenancy to be extended by three years at the option of the tenant. That being the bargain which the parties have clearly reached it would, in our opinion, upon the exercise of the option, be reasonable to construe the effect of that bargain to be that the tenancy was extended from a term of three years to a term of six years and that no new tenancy was created. If this is the legal position then it follows, in our opinion, that the notice to quit which terminated the tenancy on April 30, 1975 is a valid and effective notice to quit.

If we are wrong, and upon the exercise by the respondent tenant of his option by his letter of October 30, 1974 a new tenancy would commence from February 1, 1975, the question is whether the notice to quit given on January 31, 1975 before the commencement of the new tenancy is a valid and effective notice terminating the new tenancy on April 30, 1975.

The case of *Lower v. Sorrell*⁽¹⁾ was referred to us on this point. In that case a tenancy under a 1943 agreement in writing for a term of five years had become a tenancy from year to year. By a notice to quit the landlord had limited the duration of that tenancy to the period ending September 29, 1960. On September 27, 1960 the landlord's solicitors sent to the tenant another notice to quit timed to expire on September 29, 1961. They were offering to permit the tenant to remain in occupation for another year, from September 29, 1960 to September 29, 1961, on the same terms as before except that the duration was limited to one year. The tenant accepted that offer and remained in occupation with the consent of the landlord and paid the rent up to September 29, 1961. The tenant refused to quit after September 29, 1961 and the landlord sued for possession. The county court judge found that there was a new agreement

A for the tenant to remain in possession until the expiry of the notice to quit dated September 27, 1960 which he found was served on September 28, 1960. On appeal to the Court of Appeal, all the members of the court held that the tenancy created by the new agreement was a new tenancy for the period September 29, 1960 to September 29, 1961 and was a tenancy for a fixed period of one year only. They further held that as it was a contract for a fixed period of one year only, it was therefore for an interest less than a tenancy from year to year and in those circumstances the tenancy under the new agreement would take effect under section 2(1) of the Agricultural Holdings Act 1948 as a tenancy from year to year.

C Mr. Blundell, on behalf of the landlord, argued that even if the new tenancy took effect as a tenancy from year to year, the tenancy had been duly determined by September 29, 1961 as a notice to quit was given in terms of the tenancy, although that notice was given just before the tenancy commenced. Ormerod L.J. dealt with Mr. Blundell's argument as follows:—

D "Mr. Blundell argues that even if that be so the tenancy has still been determined by September 29, 1961, as a notice was given in accordance with the terms of the tenancy, although that notice was given just before the tenancy commenced. He argued that the giving of a notice to terminate a tenancy which had not commenced was no bar to the notice, and that in those circumstances a tenancy from year to year could be determined by such a notice and could therefore be a tenancy for one year only. Mr. Blundell agreed that neither his industry nor that of other counsel concerned in the case had been able to discover an authority dealing with this question, and for my part I know of none and should find it difficult to hold that a notice given before a tenancy began in these circumstances was valid." (at page 968).

Donovan L.J. dealt with Mr. Blundell's argument as follows:—

F "Alternatively, he claims that the third notice to quit, which the county court judge found was received on September 28, 1960, effectively determined the new tenancy even as enlarged by section 2 of the Act of 1948.

In my opinion, however, a notice to quit is a notice given by an existing landlord to an existing tenant, and, if that view be right, it follows that a person cannot give a valid notice to quit before he has become a landlord and the recipient of the notice his tenant, or before legal relations exist between them which otherwise permit such a notice.

G In this connection it may be observed that section 23 of the Act of 1948 invalidates any notice to quit which purports to terminate a tenancy before the expiration of 12 months from the end of the then current year of tenancy. Mr. Blundell pointed out that the third notice to quit was not given during the currency of the tenancy now in question, and that accordingly the section does not apply. That may well be true, but nevertheless the wording of the section is of value on the present point, for it clearly proceeds on the assumption that a notice to quit is a notice which is given by an existing landlord to an existing tenant. As I say, I think this is the right view." (at page 975).

Pearson L.J. dealt with Mr. Blundell's argument as follows:—

I "The third notice to quit given on September 27, 1960, cannot operate to terminate the statutory tenancy from year to year from September 29, 1960, because it is to be implied from section 23(1) of the Act that a notice to quit for terminating such a tenancy must be given in a year of the tenancy, whereas the third notice to quit was given before this tenancy began."

During the hearing of the appeal both parties relied on *Lower v. Sorrell*. Mr. Chao, on behalf of the appellant, relied on the passage in the judgment

of Donovan L.J. which stated that a person cannot give a valid notice to quit before legal relations exist between him and the recipient of the notice which otherwise permit such a notice. Mr. Chung, on behalf of the respondent, relied on the passage in the judgment of Ormerod L.J. which stated that he would find it difficult to hold that a notice to quit given before a tenancy had commenced was valid. Mr. Chao also referred us to the case of *Sidebotham v. Holland*⁽²⁾ in which the Court of Appeal held that a notice to quit on the anniversary of the commencement of the term of the tenancy was a good notice. In that case, although it is settled law that a notice ought to expire on the last day of the current year of a tenancy from year to year, Lindley L.J. said:—

"But, although a half-year's notice to quit on the 18th would be correct, it does not follow that a notice to quit on the 19th, which is the anniversary of the day on which the tenancy commenced, is bad, and I am clearly of the opinion that it is not. I have looked at all the decisions which were referred to in the argument and at many more, and I can find none in which it has been held that a half-year's notice to quit on the anniversary of the day on which the tenancy commenced is bad. I should be very much surprised to find such a case. The validity of a notice to quit ought not to turn on the splitting of a straw. Moreover, if hypercriticisms are to be indulged in, a notice to quit at the first moment of the anniversary ought to be just as good as a notice to quit on the last moment of the day before. But such subtleties ought to be and are disregarded as out of place."

In the present case the tenant wanted and was given an assurance of a secured term of three years. The agreement in writing which he subsequently signed contained a clause that "notwithstanding anything herein contained either party may terminate the tenancy at any time by giving to the other party three (3) months' previous notice in writing". That clause governed the tenancy, new or existing, when the tenant exercised the "option for extension of 3 years". The notice to quit was given and served on January 31, 1972 in relation to the extended term to expire on April 30, 1972. It follows that in substance and in fact the tenant had been given the enjoyment of all his rights under the contract between the parties. Under these circumstances we do not share the doubt felt by Ormerod L.J. and do not find it difficult to hold that the notice to quit given on January 31, 1972 a few hours before the commencement of the extended term of the tenancy was a valid notice given in compliance with Clause 4(i) of the tenancy agreement. *Sorrell's* case is distinguishable in that the decision went against the landlord because it was to be implied from section 23(1) of the Agricultural Holdings Act, 1948 that a notice to quit for terminating a tenancy under that Act must be given in a year of the tenancy.

In any event, under the circumstances, the validity of the notice to quit ought not, in the words of Lindley L.J., to turn on the splitting of a straw and, even if there was a new tenancy, we hold that it was a valid notice.

For all these reasons, the appeal is allowed with costs here and in the court below.

Appeal allowed.

Solicitors: *Tan Kim Seng & Co.*

LEE KUAN YEW v. J.B. JEYARETNAM

[O.C.J. (Chua J.) January 9, 1979]

[Singapore — Suit No. 218 of 1977]

Libel and Slander — Defamation — Election speech — References to plaintiff and his family — Test whether words used are defamatory is objective not subjective — Effect words would have upon ordinary hearer — Defence of qualified privilege — Fair comment — Damages — Aggravated damages — Defamation Act (Cap. 32), ss. 9 14.

Torts — Defamation — Election speech — References to plaintiff and his family.

In this case the plaintiff, the Prime Minister of Singapore, brought an action for defamation against the defendant, the Secretary-General of the Workers' Party, arising out of a speech made by the defendant during the course of the general election in December 1976. It was alleged by the plaintiff that the words used by the defendant in their natural and ordinary meaning meant and were understood to mean that the plaintiff had procured preferential treatment for his brother and/or wife to his own and/or their personal financial advantage, had thereby abused and would continue to abuse the office of Prime Minister of Singapore, is wanting in honesty and integrity and is unfit to hold the said office. In his defence the defendant denied that the said words bore or were understood to bear any of the meanings alleged or any meaning defamatory of the plaintiff. The defendant also relied on the defences of qualified privilege and fair comment.

Held: (1) the test to be applied in construing the words used is objective not subjective. The test is the effect which the words would have upon the ordinary hearer. There could be no doubt that the words used in this case bore the meaning that the plaintiff had procured the favours to Lee & Lee and to his family;

(2) the plaintiff had proved that the words complained of were published of him by the defendant and that the words were defamatory of him;

(3) the fact that it was election time gave no privilege to the defendant. He was entitled to defend himself against an attack but he could not proceed to make a counter-charge which was not part of his refutation of the attack made on him. In this case the defence of qualified privilege failed;

(4) the defence of fair comment also failed as the words used were not comments; even if they were comments they were not fair comments; and it was clear that in speaking and publishing the words the defendant was actuated by express malice;

(5) there were factors which made this a serious case and in all circumstances the sum of \$130,000 damages would be a fair compensation for the very serious slander.

Cases referred to:—

- (1) *Capital and Counties Bank v. Henty* (1882) 7 H.L. 741.
- (2) *E. Hulton & Co. v. Jones* [1910] A.C. 20.
- (3) *Lewis v. Daily Telegraph Ltd.* [1964] A.C. 234.
- (4) *Jones v. Skelton* [1963] 3 All E.R. 952.
- (5) *Grubb v. Bristol United Press Ltd.* [1963] 1 Q.B. 309.
- (6) *Plummer v. Charman* [1962] 1 W.L.R. 1469.
- (7) *Turner v. M.G.M. Pictures Ltd.* [1950] 1 All E.R. 449.
- (8) *R. v. Flowers* (1880) 44 J.P. 377.
- (9) *Horrocks v. Lowe* [1975] A.C. 135.
- (10) *McCary v. Associated Newspapers Ltd.* [1964] 3 All E.R. 947, 960.
- (11) *Cassel & Co. Ltd. v. Broome* [1972] A.C. 1027.
- (12) *Bernstein v. The Observer, The Times*, May 5, 1976.

CIVIL SUIT.

Robert Alexander Q.C. (J. Grimberg with him)
for the plaintiff.